(5)

No. 05-502

In the Supreme Court of the United States

BRIGHAM CITY,
Petitioner,

v.

CHARLES W. STUART, SHAYNE R. TAYLOR, AND SANDRA TAYLOR
Respondents.

On Writ Of Certiorari To The Utah Supreme Court

BRIEF SUPPORTING PETITIONER OF AMICI CURIAE STATES OF MICHIGAN, COLORADO, DELAWARE, HAWAII, ILLINOIS, IOWA, KANSAS, MARYLAND, MONTANA, NEBRASKA, NORTH DAKOTA, OREGON, PENNSYLVANIA, VERMONT, WASHINGTON, WYOMING; SCOTT COUNTY, MINNESOTA, AND WAYNE COUNTY, MICHIGAN.

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STATEMENT OF THE QUESTION

From outside a home at 3:00 a.m., officers witnessed a tumultuous struggle between four adults and a juvenile. Upon seeing the juvenile punch one of the adults in the face, the officers entered the home to quell the violence. The questions presented are:

1. Does the "emergency aid exception" to the warrant requirement recognized in *Mincey v. Arizona*, 437 U.S. 385 (1978) turn on an officer's subjective motivation for entering the home?

2. Was the gravity of the "emergency" or "exigency" sufficient to justify, under the Fourth Amendment, the officers' entry into the home to stop the fight?

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STATEMENT OF MATERIAL FACTS AND PROCEEDINGS

The amici adopt the factual statement presented by the Petitioner.

INTEREST OF THE AMICI

Amici states and counties have a substantial interest in ensuring consistent application of the Fourth Amendment. The issue presented here presents a common fact pattern and a vexing issue on which jurisdictions in the country are not consistent. Amici states believe that the opinion and judgment at issue reaches the wrong conclusion on the issue presented, one that is deleterious to police exercise of their community-caretaking function, and ultimately dangerous to the public. The police need guidance as to how to act when confronted with situations where injury is threatened, and the public needs protection in these situations as well. Amici believe that the entry of the police here to quell the violence occurring before their eyes and to prevent injury before it occurred was entirely reasonable under the Fourth Amendment. The Fourth Amendment should not prevent officers from taking reasonable action in protecting the public from harm before it occurs, just as it should not disallow them from investigating when there are grounds to believe an injury as already occurred so as to provide aid.

SUMMARY OF ARGUMENT

There are two separate doctrines concerning "exigent" situations that permit entry into premises without a warrant. One, a part of the community-caretaking function of the police, is best known as "emergency circumstances," and allows the police to enter on a basis of proof akin to reasonable suspicion to provide aid to someone injured, or to prevent or avoid injury to person or property. Because not directed at the discovery and seizure of criminal evidence or contraband, this entry and search falls within

the Reasonableness Clause and without the Warrant Clause of the Fourth Amendment. Whether police conduct is justified in a particular case turns not on the subjective motivation or hopes and desires of the officers, but the objective facts. If the objective facts give rise to cause to believe a person inside is in need of immediate aid, or that entry is necessary to prevent or avoid injury to persons or property, the entry is valid even if the police have additional subjective motives for entry. Here, the police entered to quell a disturbance and avoid injury. The notion that they may have had a "law-enforcement" interest here as well is both peculiar on the facts, and irrelevant to the validity of the entry.

Exigent circumstances also justify entry into premises when there is probable cause to enter for a law-enforcement purpose but to await a warrant will either cause the loss of evidence sought or injury to persons or property. Here, an assault occurred before the very eyes of the police. Entry to end the assault, even if viewed as a law-enforcement purpose, was justified as the assault occurred before their eyes and the struggle was ongoing. The police need not wait until injury has occurred before acting to avoid injury. The entry here was entirely proper; in fact, it was sound police work, of the sort which ought to be encouraged, not prevented.

ARGUMENT

I. Introduction

A. The Factual Pattern Involved

Put simply, the police here, answering a disturbance call, observed a physical altercation occurring right before their eyes. They made this observation from outside the premises—and there is no question that they were properly in a position to make it—and the altercation was occurring just inside the premises. Several individuals appeared to be attempting to restrain another, and that individual broke free and landed a punch to the face of one those seeking to restrain him. At that point, the officers had no way of knowing whether the individual who landed the punch was a criminal—perhaps even an intruder—who the others were attempting to restrain, or was himself a victim of intruders. Or the altercation may have been a mutual affray.

This incident is representative of a category of situations to which the police must respond—police responding to disturbance calls regularly confront incidents of violence ongoing in the premises, and must make a quick decision whether to enter to quell the disturbance before it escalates and risks serious injury to those involved or the officers themselves, or, if the law so commands, do nothing if serious or aggravated injury has not *yet* occurred or is not being threatened at that very moment.

The state decisions in this case command the police to, in effect, take the most passive approach possible under the circumstances, attempting to signal their presence in some way while remaining outside (even if unlikely to be noticed given the nature of the ongoing event). Rather than entering immediately to avoid escalation of the events and serious harm, they are to hold their ground outside the premises unless and until serious bodily injury that might be prevented by immediate entry actually occurs (or perhaps is threatened by the use of a deadly weapon). The requirement of the Fourth Amendment that all searches and

seizures be "reasonable" does not compel this result, and this Court ought to so say.

B. The Framework for Analysis

(1) Entries into premises not solely directed at the seizure of persons or things are governed by the Reasonableness Clause, not the Warrant Clause

The current controlling view of the Fourth Amendment is that warrantless searches are "per se unreasonable," unless falling into one of several recognized "exceptions" to the warrant requirement.[1] This view does not have unanimous support; some members of the Court have argued that the "preference" for a warrant is a "judicially created" rule, there being "nothing in the Fourth Amendment itself [requiring] that searches be conducted pursuant to warrants."[2] Justice Black stated that "the Fourth Amendment does not require that every search be made pursuant to a warrant. It prohibits only '*unreasonable* searches and seizures.' The relevant test is not the reasonableness of the opportunity to procure a warrant, but the reasonableness of the seizure under all the circumstances."[3] And Justice Stevens has also urged the construction that "[t]he Fourth Amendment contains two separate Clauses, each flatly prohibiting a category of governmental conduct. . . . [T]he ultimate question is whether the category of warrantless searches [in question] is 'unreasonable' within the meaning of the first Clause."[4]

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[1] See e.g. Whitebread, *Criminal Procedure*, sec.4.03(c), at p.108, positing that there are precisely six warrant exceptions.

[2] *Robbins v. California*, 453 U.S. 420, 438 (1981) (Rehnquist, J., dissenting).

[3] *Coolidge v. New Hampshire*, 403 U.S. 443, 509 (1971) (Black, J., concurring and dissenting, emphasis added).

[4] *Marshall v. Barlows*, 436 U.S. 307, 325-326 (1978) (Stevens, J., dissenting, footnote omitted). See also Telford Taylor, *Two Studies In Constitutional Interpretation*, p. 46-47 (1969).

A "warrant preference/exceptions" theory of the Fourth Amendment fails to explain coherently why some searches may be accomplished without warrant, and is inadequate to do so. But there *is* a coherent approach to application of the Warrant Clause, one based on the text of the Fourth Amendment, as well as its history.[5] The Warrant Clause itself provides much of the answer,[6] for a warrant may only be obtained on a demonstration of "probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." Toward what kinds or types of searches is the Warrant Clause aimed? Those which have as their purpose the *discovery* and *seizure* of fruits, instrumentalities, contraband, evidence, or people, for that sought "to be seized" must be particularly described *in advance* to the magistrate—its presence in the location to be searched must thus be anticipatable, and this shown by evidence giving rise to probable cause.[7] The logical inference drawable from the probable cause and particularity requirements is that a warrant is required for all searches the purpose of which is to discover and seize physical items or persons, unless necessity (exigent circumstances) justifies search without warrant.[8]

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[5] And indeed, this Court took precisely this approach—looking to textual clues, and considering the harm or evil at which the provision was aimed—in construing the Confrontation Clause in *Crawford v. Washington*, 541 U.S. 36 (2004) where the text involved—"witnesses against"—presented far less to work with than does the Fourth Amendment.

[6] Bartee, "The Fourth Amendment: An Immodest Proposal," 11 Am. J. Crim. Law 293, 298 (1983).

[7] Professor Grano argues cogently in Grano, "Rethinking the Fourth Amendment Warrant Requirement," 19 Am. Crim. L. Rev. 603 (1982) that history in fact supports a warrant preference, forgiven only by exigency. But Professor Grano carefully limits his analysis to the "more traditional searches for criminal evidence, searches subject to the usual probable cause requirement." 19 Am. Crim L. Rev. at 605, fn 10. That searches for other purposes are in fact outside the Warrant Clause is fully consistent with Professor Grano's thesis.

[8] Bartee, 11 Am. J. Crim. Law at 299-301; 309-312.

The Warrant Clause thus applies to searches which are directed toward the discovery and seizure of particularly described things, and not to searches that have a different purpose; these are governed by the Reasonableness Clause. A search which is not seizure-directed cannot be within the Warrant Clause because there are no items to be seized which can be described in advance with particularity, and there can be no probable cause to find items which are not being sought in the first place.

The point is also made by history. The Framers' concern was with searches which were aimed at the discovery and seizure of things, searches which should require a specific warrant (and not a general warrant, or writ of assistance), and probable cause to believe the items will be found in the place to be searched.[9] Though it may well be that the Framers' and ratifiers' concern was not with warrantless searches simply because they did not occur, searches requiring some authorization, again this historical point refers only to searches for criminal evidence.[10] Warrantless searches for other purposes were well-established at the time of the ratification of the Fourth Amendment.[11] And, of course, the modern police department was not established at the time of the Framing and ratification; the role of police officers as

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[9] See Grano, 19 Am. Crim. L. Rev. at 617-621.

[10] Grano, 19 Am. Crim. L. Rev. at 617.

[11] See e.g. *Frank v. Maryland*, 359 U.S. 360 (1959). While it is true that the Court has required "inspection warrants" in circumstances where traditional probable cause does not exist and cannot be shown, *Camara v. Municipal Court*, 387 U.S. 523 (1967); *See v. Seattle*, 387 U.S. 541 (1967), in a number of other situations warrantless inspections remain permissible. See e.g. *South Dakota v. Opperman*, 428 U.S. 364 (1975); *United States v. Biswell*, 406 U.S. 311 (1972); *Donovan v. Dewey*, 452 U.S. 594 (1981); *Michigan v. Tyler*, 436 U.S. 499 (1978). And in an appropriate case amicus submits that the Court might well reconsider the views of Justice Stevens concerning those cases requiring "search warrants" though traditional probable cause is neither present nor appropriate as a justification for the entry.

"community caretakers" in a variety of situations has developed more fully through time. It must be born in mind that the Constitution "supports not only what its text requires but also much that it merely suggests or allows." The conduct of government agents need not be shown to have a historical counterpart at the time of the Framing in order to be constitutional; rather, the conduct in question simply cannot be consistent with actions that were *prohibited* at that time either expressly or by way of analogy.[12]

An acceptance of the theory that the Warrant Clause, by its textual relation to both probable cause and particularity requirements, and by its history, is aimed at seizure-directed searches, so that a warrant is required for all seizure-directed searches unless emergency circumstances require quick action, would supply the rationale for when the Warrant Clause applies and when it does not. And the entry into premises accomplished in the present case for purposes other than the seizure of items—to quell a disturbance and avoid physical injury to persons—is without the Warrant Clause rather than within some exception to it, and governed by the requirement of reasonableness—which it surely was.

(2) The emergency-circumstances doctrine is distinct from exigent circumstances, either as a discrete category of exigent circumstances or an independent doctrine.

The entry of the police here was justified both by the doctrine of "emergency circumstances" as part of the community-caretaking function of the police, and also exigent circumstances as part of the law-enforcement responsibilities of the police (it is quite possible for the objective facts to justify an entry *both* to protect occupants of the premises against injury as well as to pursue law-enforcement objectives). Whether emergency

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[12] Keith Whittington, *Constitutional Interpretation: Textual Meaning, Original Intent, and Judicial Review* (1999), p. 172, 211.

circumstances is viewed as independent from exigent circumstances, or as a sub-category of that doctrine, the two principles are distinguishable, and for the sake of accurate discussion and avoidance of confusion should be referred to separately, though they may both be applicable to a particular factual situation, as here.[13] The "exigent circumstances" exception to the warrant requirement concerns the actions of the police in their law-enforcement capacity. Evidence or persons are sought, and entry or search is permitted without warrant because a failure to so allow could result in the loss of the evidence or items sought. Probable cause is thus required in these circumstances.[14]

"Emergency circumstances" involve the community-caretaking function of the police, where entry into premises occurs not to seize evidence or persons to build a case, but to determine whether someone on the premises is in need of aid, to provide aid to someone injured, or to avoid injury to persons or property. These entries are without the Warrant Clause, governed by reasonableness, and a standard akin to reasonable suspicion is applied.

II. The Test For Reasonableness For An Emergency Circumstances Entry Is Wholly An Objective One, And The Police May Enter If It Is Objectively Reasonable To Do So To Prevent Injury To Person(S) From Occurring.

A. "Subjective" Motivations Play No Part in the Inquiry

This Court has granted certiorari to settle the disagreement among jurisdictions regarding the "elements" of the emergency-

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[13] See e.g. John Decker, "Emergency Circumstances, Police Responses, and Fourth Amendment Restrictions," 89 J. Crim. L. & Criminology 433 (1999); Timothy Baughman, *Michigan Criminal Law and Procedure: Search and Seizure* (2d ed.), § 4.40.

[14] See e.g. *United States v. Baskin*, 424 F.3d 1, 2 (CA 1, 2005).

circumstances doctrine. That the doctrine exists has been affirmed by this Court:

> We do not question the right of the police to respond to emergency situations. Numerous state and federal cases have recognized that the Fourth Amendment does not bar police officers from making warrantless entries and searches when they reasonably believe that a person within is in need of immediate aid. . . . "The need to protect or preserve life or *avoid serious injury* is justification for what would be otherwise illegal absent an exigency or emergency."[15]

This Court in *Mincey* did not limit the emergency-circumstances doctrine to situations where it is reasonable to believe that a person inside the premises is in need of immediate aid—although that is certainly one circumstance justifying immediate entry—but also referred to the avoidance of injury. An entry without warrant is constitutionally reasonable as part of the community-caretaking function of the police where it is reasonable to believe, based on the objective facts, that a person inside is either in need of immediate aid or entry is necessary to *prevent or avoid* serious injury.

That the community-caretaker function of the police allows entry without warrant in some circumstances is not a matter of controversy; jurisdictions are divided as to whether the question is approached by assessing the objective facts or whether the subjective motivations of the entering officers also play a determinative role. The Utah Supreme Court came down on the

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[15] *Mincey v. Arizona*, 437 U.S. 385, 392-393 (1978)(internal footnotes and citations omitted; emphasis supplied). And see further such cases as *United States v. Barone*, 330 F.2d 543 (1964); *State v. Boggess*, 340 N.W.2d 516, 522 (Wis, 1983)(noting the need of the police to make a "prompt assessment of sometimes ambiguous information concerning potentially serious consequences").

side of the division that requires that the subjective motivation for the entry may not be "primarily" to make an arrest or find evidence, and found—though amicus finds the conclusion rather remarkable—that because no medical aid was rendered by the officers who entered, the "subjective motivations test" was not met (the court at least implicitly endorsing the notion that an entry to *prevent or avoid* serious injury does not fall within the emergency circumstances exception, which is inconsistent with this Court's observation in *Mincey*).

This Court has in other contexts set its face against "subjective motivations" tests, and should do so here as well. Not only was such a test rejected in *Whren v. United States*,[16] the Court holding that the validity of a Fourth Amendment seizure turns on the objective facts, and does not become "unreasonable" if the police involved have a subjective hope or desire that the seizure will lead to the discovery of evidence or contraband, but that rejection was reaffirmed only last term in *Devenpeck v. Alford*.[17] The Ninth Circuit held that an arrest is not valid under the Fourth Amendment when the criminal offense for which there is probable cause to arrest under the facts known to the officers is not "closely related" to the offense *stated* by the arresting officer at the time of arrest. This Court unanimously rejected this subjective test *precisely* because the rule stated by the Ninth Circuit made "the lawfulness of an arrest turn upon the motivation of the arresting officer. . . . This means that the constitutionality of an arrest under a given set of known facts will 'vary from place to place and from time to time,' . . . depending on whether the arresting officer states the reason for the detention and, if so, whether he correctly identifies a general class of offense for which probable cause exists. An arrest made by a knowledgeable, veteran officer would be valid, whereas an arrest made by a rookie *in precisely the same circumstances* would not. We see no reason to ascribe to the Fourth Amendment such

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[16] *Whren v. United States*, 517 U.S. 806 (1996).

[17] *Devenpeck v. Alford*, 543 U.S. 146 (2004).

arbitrarily variable protection."[18] The same is true here; this Court needs to make plain that the validity of an emergency circumstances entry turns on whether, under the objective facts, it is reasonable to conclude that a person inside is in need of immediate aid or that entry is required to *prevent* serious injury from occurring. And when an immediate entry may prevent serious injury from occurring, the fact that medical attention has not yet become necessary does not impugn even the subjective motivations of the entering officers.

Petitioner has well treated the various cases regarding the matter, and the amicus will not recover that ground. But one commentator has suggested that

> [t]he officer should be motivated by a good faith desire to aid a person in need, prevent harm, or to protect significant property interests.
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> * * *
>
> While it is unnecessary that this community caretaking motive be the only motive in an officer's mind at the time of the warrantless entry, it is essential that the desire to aid or protect be a primary, or at least a substantial, part of the officer's good faith subjective motivation. It is quite conceivable that an officer engaging in a warrantless search may simultaneously have dual motives for his or her actions, but as long as one of these motives corresponds with an objectively reasonable emergency, as defined in the first prong, then the emergency doctrine is applicable.

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[18] *Devenpeck*, 543 U.S. at 154 (citations omitted, emphasis original). And see *Scott v. United States*, 436 U.S. 128, 138 (1978) ("... the fact that the officer does not have the state of mind which is hypothecated by the reasons which provide the legal justification for the officer's action does not invalidate the action taken as long as the circumstances, viewed objectively, justify that action").

* * *

> The officer needs to be actually engaged in community caretaking, not merely using an emergency situation as a pretext for other motives.[19]

The commentator thus takes to task the Iowa Supreme Court for "disregard[ing]" this "central component of the emergency doctrine" by announcing that it would "no longer apply the motivation prong in emergency doctrine analysis."[20]

In the Iowa case[21] the police received a missing person report from the daughter of one Rita Young, who had been living with the defendant. The daughter told the police she spoke twice a day with her mother, but had not heard from her for several days, and was concerned because defendant had been abusive to her in the past. Further, Carlson had given her conflicting information about her mother's whereabouts, and when, in an attempt to gain entrance to the house to look for her mother, the daughter had called ahead to defendant and asked to borrow a certain dish, on her arrival the door had been locked, the lights were on, the garage door was up, and the car was gone, "indicating [Carlson] had left hurriedly."

The officers decided, then, to check on the mother, and proceeded to defendant's house, where the saw a person watching television in an upstairs room, but received no answer to knocks on the various doors of the house or to telephone calls to the residence. The officers learned the structure was a duplex, and the person upstairs was a tenant; he reported he had not seen the mother, and that the defendant was probably asleep in his own apartment. A forced entry was made, defendant found asleep,

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[19] Decker, 89 J. Crim. L. & Criminology at fn 13, p. 510-511, 512.

[20] Decker, 89 J. Crim. L. & Criminology at 512.

[21] *State v. Carlson*, 548 N.W.2d 138 (Iowa, 1996).

and the body of the mother, bound and beaten, found in the basement.

Noting that it had previously adopted the "emergency aid"/community caretaker doctrine, allowing warrantless entries to render aid or assistance, and that it had held that an "actual" or "subjective" motivation was required under the doctrine, the Iowa Supreme Court abrogated the subjective requirement, pointing to the objective test in claims of "pretext" arrests. Prescient of this Court's remarks in *Devenpeck*, the court observed that "the officers' subjective thinking processes shed little light on the reasonableness of the intrusion. . . . [R]easonableness should be tested . . . only on the basis of the objective circumstances."[22] The court was correct; if the invasion of privacy was justifiable based on the objective facts, the entry is reasonableness without regard to what motivation was in the officer's heads.

The motivations of the police cannot control the constitutional question here, but this is not to say that they play no role. Assuming objective facts justifying the entry, the subjective motivations play no role, and thus play no role in appellate review. But a factfinder, of course, is free to consider motivation in determining credibility. What is actually at issue when terms such as "good faith" or "pretext" are employed is whether the articulated objective basis for the police actually exists. If, for example, an officer enters premises because, he testifies, he heard screams, and no other person heard those screams, though others were in a position to do so, and it is revealed the officer also had a subjective investigative motive for entry, then as a matter of credibility it may be found by the judge hearing the evidence that the objective basis for the entry simply does not exist—that there were no screams. But if in fact there were screams coming from a house that an officer longed to enter to investigate for narcotics activity, this subjective motivation would not defeat the reasonableness of the entry under the emergency-aid doctrine.

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[22] *Carlson*, 548 N.W.2d at 141-142.

B. Entry May Occur to Prevent Injury, Not Simply to Provide Aid or Treatment to An Injury That Has Already Occurred

Petitioner has also well noted the split of opinion in various jurisdictions regarding the gravity of the exigency required before the exigent circumstances doctrine may be applied, a point also applicable to emergency circumstances. The Utah Supreme Court found the doctrine inapplicable because serious bodily injury had not *yet* occurred. But the *avoidance* of great bodily harm is a permissible purpose of immediate entry, and officers must make an immediate on-the-spot assessment, which should not lightly be second-guessed.[23] That delay when faced with an altercation of the sort involved here might result in occurrence of a serious injury that could have been avoided by immediate action renders the action of the police in entering entirely reasonable. It is *un*reasonable to require that the police wait to enter until serious bodily injury has occurred or a deadly weapon is employed.

III. Where From Outside Premises Police Observe Acts Of Physical Violence Occurring Inside The Premises Immediate Entry By The Police Is Justified By The Doctrine Of Exigent Circumstances, As Part Of The Law-Enforcement Function Of The Police.

The entry here was justified not only pursuant to the community-caretaking function of the police, but also under the exigent circumstances doctrine where the police are acting in their investigative capacity—and where harm to an individual is occurring or about to occur the two doctrines often intertwine.

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[23] Where . . . the police are called upon to respond to a crime reported to be in progress, . . . the police judgments [concerning entry of the premises] should be afforded an extra degree of deference. *Reardon v. Wroan*, 811 F.2d 1025, 1029 (CA 7, 1987).

The level of information necessary for the police to enter premises under the emergency circumstances doctrine is akin to reasonable suspicion.[24] But where entry is justified by exigent circumstances in the exercise of the law-enforcement function of the police, probable cause that a crime has been committed is required.[25] Some courts, including the Utah Supreme Court here, take the view that exigent circumstances cannot justify entry to preserve evidence of a "minor" offense or to arrest for a minor offense, often citing *Welsh v. Wisconsin*.[26] But that case does not require that result.

Welsh did not involve entry where there was probable cause to believe a crime was occurring before the very eyes of the police officers on the scene, but rather an entry to preserve evidence—blood-alcohol content—that would dissipate with time and thus be unavailable if delay occurred. An exigent circumstances entry requires probable cause that a crime was committed and reason to believe that evidence will be destroyed or lost if in entry is delayed to obtain a warrant, *where preservation of evidence is the purpose of the entry.* In *Welsh* this Court held that where the offense is a minor one (and it must be born in mind that the statute there provided that a first offense was a noncriminal violation subject to a civil forfeiture proceeding for a maximum fine of $200), the "preservation of evidence" component of exigent circumstances will not justify a warrantless entry.

But preservation of evidence is not the *only* justification for an exigent circumstances entry—that entry may also be justified, as with emergency circumstances, to prevent injury to a person or persons (generally involved with an ongoing crime) or even injury to property (also generally involved with an ongoing crime). Unlike evidence gathering, where the purpose of an entry

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[24] See e.g. *People v. Davis*, 442 Mich. 1, 20; 497 N.W.2d 910 (1993).

[25] See e.g. *United States v. Baskin*, 424 F.3d 1, 2 (CA 1, 2005).

[26] *Welsh v. Wisconsin*, 466 U.S. 740 (1984).

based on probable cause to believe that a crime has been committed is to prevent injury or damage to property, the entry is justifiable without regard to the seriousness of the offense. As one court—which does not stand alone—has said, "[i]t would have been wholly unreasonable [for the police] to stand idle, watching further damage being done to cars which were almost certainly stolen, while a warrant was obtained. . . . [T]hey had a duty to preserve and protect the property of the owners, and . . . exigent circumstances justified their entry into the garage."[27] Amicus submits that where probable cause exists—and it existed here—that which drives the permissibility of the entry may be the seriousness (or lack of seriousness) of the offense *only* when preservation of evidence is the goal. But seriousness of the offense is not relevant when the goal of the police—as with emergency circumstances—is to prevent or avoid injury (or further injury) to either property or persons. That an assaultive offense is occurring before the eyes of the officers should, *by definition*, permit the entry of the officers into the premises on this basis under exigent circumstances, as well as emergency circumstances.

Police who arrive at premises in response to disturbance calls and, from without the premises, see or hear evidence of violence occurring within the premises, must make an immediate judgment as to how to respond. A judgment to enter to should be afforded particular deference. The community-caretaking function of the police permits the police to enter if it is reasonable to believe that someone inside is in need of immediate aid, or that entry will avoid either injury or further injury. For this entry to be reasonable under the Fourth Amendment the question is what the objective facts reveal, not the arguable subjective motivations of the officers; further, that serious injury has not yet occurred does not render an entry unreasonable when an assault is ongoing at the time of the officers arrival, when prompt action may *prevent* escalation of the situation and serious injury.

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[27] *United States v. Connor*, 478 F.2d 1320, 1324 (CA 7, 1973).

Exigent circumstances concerns an entry into premises without warrant when the police are exercising their law-enforcement function. There must be probable cause to believe a crime has or is occurring, and it must be reasonable to believe that delaying entry until a warrant is obtained will result in the loss of evidence or injury to persons. Where the concern is preservation of evidence, an entry is not reasonable where the offense is a very minor one (perhaps simply a civil infraction). But the seriousness of the offense should not be of concern when the purpose of the entry is to avoid or prevent injury to persons or property.

CONCLUSION

Wherefore, amicus submits that the Utah Supreme Court should be reversed.

Respectfully submitted

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